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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Joseph C. et al., Persons
Coming Under the Juvenile
Court Law.

B291812
(Los Angeles County
Super. Ct. No. DK16513)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Marguerite Downing, Judge. Affirmed.

Gina Zaragoza, under appointment by the Court of Appeal,
for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and
Respondent.

M.V. (Mother) appeals from the orders denying her Welfare and Institutions Code¹ section 388 petition and terminating her parental rights over three of her children—nine-year-old Marlene L., seven-year-old Jacelyn L., and two-year-old Angel L. Mother contends the juvenile court deprived her of due process when it denied her section 388 request without a hearing, and the denial was an abuse of discretion. In addition, Mother claims the notice for the section 366.26 hearing was deficient. She also asserts the trial court erred in terminating her parental rights because two exceptions to adoption—the beneficial parental relationship and sibling relationship exceptions—applied. Mother also appeals from the order denying her section 388 petition as to her fourth child, 13-year-old Joseph. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Petitions and Detention

On April 12, 2016 probation officers conducted a probation compliance search of the home of Jesus L. (Father), who was on probation for possession of methamphetamine for sale. Jesus is the father of Marlene, Jacelyn, and Angel; J.C. is the father of Joseph. Mother, Father, Marlene, Jacelyn, and Joseph were living with Father's parents. On weekdays Joseph lived at the home of the maternal grandmother, Maria C., so he could attend a school closer to her home; he lived with Mother and Father on weekends.

¹ Further statutory references are to the Welfare and Institutions Code.

During the search, the probation officers found three methamphetamine pipes in Mother's pockets, and another in her purse. The four glass pipes had white powder and residue inside. The officers also recovered six small plastic bags of methamphetamine from Mother's pockets. Los Angeles police officers responded and arrested Father for a probation violation and Mother for possession of methamphetamine for sale. Mother was five months pregnant at the time.

A social worker separately interviewed Mother and Father at the jail. Mother denied drug use, but was aware Father used drugs in the home. Mother said she took Father's methamphetamine and pipes and placed them in her pockets when she saw the probation and police officers arrive at the home. Father said the drugs and pipes did not belong to him, and he was not sure why they were in the home. He denied drug use; however, he had a positive drug test two weeks earlier on March 31, 2016.

On April 15, 2016 the Los Angeles County Department of Children and Family Services (the Department) filed a section 300 petition on behalf of Joseph, Marlene, and Jacelyn. The petition alleged in count b-1 that Father had a history of illicit drug use and used methamphetamine, which rendered him unable to care for the children. Mother was aware of Father's drug use and failed to protect the children. The petition also alleged in count b-2 that Mother placed the children in a detrimental situation because the drug pipes and methamphetamine were accessible to the children and she was arrested for possession of methamphetamine for sale.

At the April 15, 2016 detention hearing, the juvenile court detained the children from their parents. The court ordered the

Department to assess Maria for placement of the children and to provide the parents with service referrals, including random drug testing. The court granted monitored visits for Mother.

On May 10, 2016 the Department filed a first amended petition, alleging in count b-2 that Mother tested positive for methamphetamine on April 25, 2016. In addition, the amended petition alleged in count b-4 that Mother and Father previously pushed and slapped each other. Further, Mother and Father struck each other's hands while Mother was pregnant.

On June 6, 2016 the Department placed Joseph, Marlene, and Jacelyn in Maria's home.

B. *The Jurisdiction and Disposition Hearing*

At the August 10, 2016 jurisdiction and disposition hearing, the juvenile court sustained the amended allegations in counts b-1 and b-2 of the first amended petition, and found Marlene, Jacelyn, and Joseph were children described by section 300, subdivision (b)(1). The court removed the children from the parents' custody and granted family reunification services to the parents. The court ordered Mother and Father to participate in a full drug program with aftercare, random or on-demand drug testing, a 12-step program, parenting classes, individual counseling, and conjoint counseling with each other. The court granted monitored visits for Mother with all three children, monitored visits for Father with Marlene and Jacelyn, and unmonitored visits for J.C. with Joseph, with the Department having discretion to liberalize visitation.

C. *The Petition, Detention, and Jurisdiction and Disposition Hearing for Angel*

Angel L. was born in August 2016. On October 18, 2016 Mother told a social worker that she had left the home with Angel after a domestic violence incident with Father. Mother had not drug tested or attended a drug program because she did not have transportation or childcare. According to Maria, Mother “sporadically” visited the children. The social worker recommended the court detain Angel because Mother and Father had a history of methamphetamine use, they had not submitted to drug testing, and they were not complying with their case plans.

On November 8, 2016 the Department filed a petition on behalf of three-month-old Angel under section 300, subdivisions (a), (b)(1), and (j). The petition alleged Mother and Father had a history of domestic violence, including a violent altercation in October 2016 in which Father struck Mother. On prior occasions, Mother and Father pushed and slapped each other. The petition also alleged Mother and Father used methamphetamine, which interfered with their ability to provide care to Angel. Father had criminal convictions for possession of a controlled substance for sale and other drug-related offenses. In addition, Angel’s siblings were dependents of the juvenile court because of Mother’s drug use. The petition also alleged facts relating to Mother’s arrest on April 12, 2016 and the positive drug test for methamphetamine on April 25, 2016.

At the November 9, 2016 detention hearing, the juvenile court detained Angel. The court released Angel to Mother on the condition she reside in housing approved by the Department, with the Department having discretion to make unannounced

home visits. The court ordered Father to stay away from Mother. The court granted monitored visits for Father with the Department having discretion to liberalize visitation. The court ordered the Department to provide the parents with referrals, including random drug testing.

At the January 26, 2017 jurisdiction and disposition hearing, the juvenile court declared Angel a dependent of the court under section 300, subdivisions (a), (b)(1), and (j). The court found Mother and Father had a history of domestic violence and used methamphetamine, which rendered them incapable of providing regular care and supervision to Angel. In addition, the court found Mother placed Angel's siblings in a detrimental situation by possessing drug pipes and methamphetamine within access of the siblings, and had been arrested for possession of the items.

The court removed Angel from Mother's custody, and granted the parents monitored visits with the Department having discretion to liberalize visitation. The court ordered Mother to participate in a full drug program with aftercare, random or on-demand drug testing, a 12-step program, a support group for domestic violence victims, parenting classes, and individual counseling to address case issues.

D. *The Six-month and 12-month Review Reports and Hearings*

The February 8, 2017 six-month status review report stated Joseph, Marlene, and Jacelyn continued to reside in Maria's home. However, she did not want to adopt the children. Maria reported Mother's visits were sporadic, and the girls would cry at times because they wanted to be with Mother. The social worker was unable to contact Mother or Father, and they had not

complied with any court-ordered programs. Mother only submitted to one drug test on August 9, 2016, which was negative.

At the February 8, 2017 six-month review hearing for Joseph, Marlene, and Jacelyn, the juvenile court found Mother and Father were not in compliance with their case plans. The court ordered the Department to provide the parents with additional family reunification services.

The July 27, 2017 12-month status review report stated Mother had still not complied with any court-ordered programs. On April 24, 2017 she tested positive for methamphetamine. Two days later Mother began an inpatient substance abuse program at Alcoholism Center for Women. However, Mother was discharged from the program on April 28, 2017 because she brought drugs into the facility and offered them to other clients. Mother claimed someone else brought in the drugs. But she admitted she had used drugs the prior weekend. Mother told the social worker she wanted to enroll in another substance abuse program, and she was placed on the waiting list for two other programs.

Maria reported in April 2017 Mother was visiting Joseph, Marlene, and Jacelyn about two times a week for two to three hours. Mother helped the children with their homework and helped shower the girls. In addition, Mother called the children on a daily basis. Maria was willing to be Joseph's legal guardian, but she could not care for Marlene and Jacelyn on a long-term basis.

Angel had been placed with the paternal grandmother, but was removed from her home on March 3, 2017 after the Department learned Father was living there following his release

from jail. On June 1, 2017 the Department placed Angel with his paternal cousin, Crystal L., who lived in Bakersfield. Crystal and her husband, Carlos R., were willing to adopt Angel, as well as Marlene and Jacelyn. Crystal agreed Mother could visit Angel two times a week for two hours in a Bakersfield mall. However, Mother cancelled the June visits she set up with Crystal, and never visited.

On September 6, 2017 social worker Cristal Olmedo spoke with Beatriz Duran, the director at Alcance Victoria rehabilitation center in San Bernardino. Duran said Mother was a client at the faith-based rehabilitation center. Duran stated Mother was allowed to stay at the center between nine months and a year. The program was not accredited or approved by the Department or the court. On September 27 Olmedo informed Mother the program was not approved. Mother said she had been there for a month and was feeling well.

Maria reported she had taken Joseph, Marlene, and Jacelyn to visit Mother at the San Bernardino program on two occasions in September and weekly in October 2017. But she was not willing to drive the children to visits with Angel, even though Crystal had offered to meet her halfway. On November 12, 2017 the Department placed Marlene and Jacelyn with Crystal; Joseph stayed in Maria's care.

On November 7, 2017 Mother told Olmedo that she was attending counseling and Narcotics Anonymous meetings. However, Olmedo was unable to verify Mother's participation in the services. Olmedo reported Mother and Father had not completed a substance abuse program, drug tested, or attended parenting classes or individual counseling. The parents had over 15 months of family reunification services, but had not made

substantive progress to resolve their issues. Moreover, the parents had not visited Angel even though the visits were set up and transportation funds were made available. Olmedo recommended the juvenile court terminate Mother's and Father's family reunification services.

On November 15, 2017 the juvenile court held a six-month review hearing for Angel and a 12-month review hearing for Joseph, Marlene, and Jacelyn. The court noted Mother had 19 months of family reunification services, but had just enrolled in a drug treatment program. The court found Mother made minimal progress with her case plan, and it terminated her family reunification services.

E. *The Interim Review Report*

The January 8, 2018 interim review report concluded it was not in Marlene's and Jacelyn's best interests to return to Maria's care. Mother had monitored visits, yet Maria went to work and left the children in Mother's care and allowed Mother to live in the home. In addition, in July 2017 Maria had allowed Mother to travel with Maria and the children to Las Vegas and to stay overnight with the children. Further, Maria could not commit to providing Marlene and Jacelyn with legal permanency. On March 3, 2018 the Department placed Joseph with J.C.

F. *The Section 366.26 Report*

The February 27, 2018 section 366.26 report for Marlene, Jacelyn, and Angel recommended adoption as the permanent plan for the children. The Department requested a continuance of the section 366.26 hearing in order to complete the adoption

home study. Marlene, Jacelyn, and Angel had limited visitation with Joseph, but they maintained phone contact.

The report stated Mother had limited visits with Jacelyn, Marlene, and Angel “primarily due to the distance between [M]other’s residential recovery home in San Bernardino and the children’s placement in Bakersfield.” Mother’s visit with the children on Christmas day was the first visit she had with the children since they were placed with Crystal in November 2017. Mother’s visit was appropriate, and the children appeared happy to be with her. Although Crystal made arrangements for Mother to visit Angel, Mother did not visit.

G. *Mother’s Section 388 Petition*

On March 5, 2018 Mother filed a section 388 petition seeking return of all four children to her custody, reinstatement of her reunification services, and unmonitored visits. Mother also requested the juvenile court take the section 366.26 hearing off calendar or adopt a plan of legal guardianship. Mother contended she had made substantial progress with her case plan by attending Narcotics Anonymous meetings and individual counseling at Inland Behavioral Health Services (Inland Behavioral). Mother indicated she was “almost done with her substance abuse program at Alcance Victoria in San Bernardino.”

Mother submitted a February 14, 2018 letter from Alcance Victoria, stating she entered the program on August 27, 2017. The letter explained Alcance Victoria “offers a rehabilitation program that relies on biblical guidance, prayer, bible studies, and an atmosphere of God’s love to effect change in a person’s life.” Mother was a church usher and “has been actively involved in prayer, bible studies, church services, and other ministry-

related activities.” Mother also attached an attendance sheet showing her participation in the program’s “self help support activities” and two unsigned February 12, 2018 letters from individuals stating the program had changed Mother’s life and she deserved to continue her rehabilitation.

In addition, Mother submitted a February 22, 2018 letter from a counselor at Inland Behavioral, stating Mother was admitted to the program on October 25, 2017. Mother had attended 29 group sessions and needed a total of 44 sessions to complete the program. The letter stated Mother had eight negative drug tests from November 2017 to February 2018, although no testing results were attached.

H. *The Status Review Report for the Section 366.3 Hearing*

The April 26, 2018 status review report for Marlene, Jacelyn, and Angel stated Mother’s “visitation has been very limited, primarily due to the distance between [M]other’s residential recovery home in San Bernardino and the children’s placement in Bakersfield.” Mother’s program did not allow her to have visits and telephone calls for a month because she left the recovery home without permission on Christmas. Mother visited Marlene, Jacelyn, and Angel on Christmas day in 2017, March 3, 2018, and March 6, 2018. When Mother called in February to schedule the March 3 visit, she asked to see Marlene and Jacelyn, but did not mention Angel. During the March 6, 2018 visit, Crystal observed Mother and Father argued for most of the visit.

Crystal stated Marlene, Jacelyn, and Angel were doing well, but Marlene’s behavior regressed after the visit with Mother and Father. Social worker Olmedo observed the children had

built a strong bond with Crystal and Carlos. The caregivers met the children's needs and wanted to pursue adoption.

I. *The Section 388 Report*

The July 23, 2018 section 388 report indicated Mother had provided social worker Jessica Church with documents showing her participation in the Alcance Victoria and Inland Behavioral drug treatment programs. As to the Inland Behavioral program, Mother provided the Department with April 6, 2018 completion documents, including a letter stating Mother attended 39 group sessions, a certificate of completion for the substance abuse program, and a certificate of completion for parenting classes.

Mother was unable to provide Church with drug test results or information on how to obtain them. Mother acknowledged she had not participated in any services since May 2018, and the record contains no evidence of services or drug testing after Mother's April 6, 2018 completion of the Inland Behavioral program. Although Mother agreed to submit to on-demand drug testing, Olmedo could not reach Mother to arrange for testing. Olmedo lost all contact with Mother.

Church interviewed Joseph, Marlene, and Jacelyn for the section 388 report. Joseph said he would choose to live with Mother because he missed her. He saw Mother about two times per month at Maria's home. Joseph stated living at his father's home was "good." Marlene enjoyed living with Crystal, stating, "I like it a lot, it's fun here." She had many friends in the apartment complex. Marlene could not remember how long it had been since she saw Mother, and stated she did not see Mother often. Marlene said she would get sad when the visits ended; however, she added, "[L]ast time I saw her it wasn't sad

when I left, I just said 'bye!'" Marlene stated, "I would rather live with my mom because I really miss her. But it's okay with me if I get adopted because I love living here too." Jacelyn also enjoyed living with Crystal. She said that it's "good and I have fun here. There's lots of kids from my school that live here." Jacelyn believed she last saw Mother the prior month. She would rather live with Mother than Crystal.

Mother did not consistently visit the children. The section 388 report stated, "Mother had a scheduled visit with the children on 5/30/2018, but she did not show up for the visit and did not call in advance to cancel the visit. Mother could not explain to [Church] why she missed the visit. Mother then told Marlene and Jacelyn that she would have a visit with them the following Saturday, 6/2/2018, but this had not been approved by the social workers. Her daughters were disappointed by this untruthful statement. Mother also had a scheduled visit with the children set for 6/14/2018 at a neutral location. Instead of arriving at the neutral location as planned, [M]other showed up uninvited to relative caregiver, Crystal [L.'s] home. Mother brought father and paternal grandmother along with her for her visit as well without prior approval. In recent months, [M]other has only complied with visitation with her children approximately once per month (her most recent visits took place on 5/12/2018, 6/13/2018 and 7/17/2018)."

The Department recommended the court deny Mother's section 388 petition. Mother had not maintained regular contact with social worker Olmedo and was "non-compliant with visitation for her children." The section 388 report stated, "Although [M]other had completed some services, she did so with the understanding that she was working with a non-

[Department] approved agency. Additionally, some of the services that she completed are not in line with her court ordered case plan, and appear to have little relevance in terms of remedying case-related issues. At this time, it does not appear that [M]other is prepared to complete Family Reunification services or to accept custody of her children.”

J. *The July 25, 2018 Last Minute Information for the Court*

The July 25, 2018 last minute information for the court stated Olmedo visited Crystal’s home on July 10, 2018. Crystal reported Mother had been speaking with the girls by telephone on the weekends for about 20 minutes each call. Marlene and Jacelyn were calling Crystal “mom” at times. They did not ask to have visits or telephone calls with Mother. Crystal and Carlos were still in agreement to adopt Marlene, Jacelyn, and Angel. Olmedo asked Marlene and Jacelyn where they would like to live. Marlene wanted to live with Mother and all her siblings. Jacelyn said she was unsure. Both girls enjoyed living with Crystal and were happy in the home. They told Olmedo if they were unable to go home with Mother, they wanted to stay and be adopted by Crystal and Carlos.

On July 17, 2018 Crystal reported Mother had moved to Bakersfield. Mother confirmed she was renting a room in Bakersfield, but she was still working as a security guard in the San Fernando Valley from Friday to Sunday. On July 24, 2018 Crystal reported the paternal grandmother told her Mother had been staying with her for the week and was drinking with friends at her apartment.

K. *The Combined Sections 364 and 366.26 Hearing*

Mother was not present at the combined sections 364 and 366.26 hearing on July 26, 2018, although she was represented by counsel. The juvenile court denied Mother's section 388 petition based on the Department's report. The court added, "So the court is going to deny, without hearing, the 388 that was filed by [Mother], noting she has not completed the case plan that was previously ordered."

As to Joseph, the court entered a juvenile custody order awarding J.C. sole legal and physical custody, with monitored visitation for Mother, and terminated jurisdiction. The court stayed the order until August 10, 2018, pending receipt of the juvenile custody order.

As to Marlene, Jacelyn, and Angel, the court noted the adoption home study had been approved and the Department's recommendation was to terminate parental rights. Mother's counsel told the court Mother had not given him any direction, but "the only grounds she may have for the objection is the sibling exception" Minor's counsel objected to application of the sibling relationship exception because the siblings were visiting each other, and J.C. was willing to continue to allow Joseph to maintain his relationship with his siblings.

The court found notice for the section 366.26 hearing was proper, and Mother's counsel did not object to the finding. The court found by clear and convincing evidence Marlene, Jacelyn, and Angel were adoptable and no exception to adoption applied. The court terminated Mother's and Father's parental rights over Marlene, Jacelyn, and Angel.

DISCUSSION

A. *Mother Can Appeal the Denial of Her Section 388 Petition*

Mother filed separate notices of appeal for Joseph, Marlene, Jacelyn, and Angel. The notices stated the appeals were from the orders terminating Mother's parental rights, without mention of the orders denying her section 388 petition. The Department contends Mother cannot appeal from the denial of her section 388 petition because she did not separately appeal from the order. However, we liberally construe a notice of appeal "from an order terminating parental rights to encompass the denial of the parent's section 388 petition, provided the trial court issued its denial during the 60-day period prior to filing the parent's notice of appeal." (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1451; accord, *In re Angelina E.* (2015) 233 Cal.App.4th 583, 585, fn. 2; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413, fn. 9.)

Here, the juvenile court denied Mother's section 388 petition and terminated Mother's parental rights over Marlene, Jacelyn, and Angel at the same July 26, 2018 hearing. We therefore liberally construe Mother's appeal from the order terminating her parental rights over Marlene, Jacelyn, and Angel to encompass the section 388 order. As to Joseph, the notice of appeal incorrectly states Mother is appealing from the juvenile court's termination of parental rights (which did not happen as to Joseph), but the notice was filed on the same day as the July 26, 2018 hearing. Because a single section 388 petition was filed as to all four children, in light of liberal construction of notices of appeal, we also review the juvenile court's denial of the section 388 petition as to Joseph. (See *In re Joshua S.* (2007) 41 Cal.4th 261, 272 ["notices of appeal are to be liberally construed so as to

protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.”]; see also Cal. Rules of Court, rule 8.100(a)(2) [“The notice of appeal must be liberally construed.”].)

B. *The Denial of Mother’s Section 388 Petition Was Not an Abuse of Discretion*

Under section 388, subdivision (a)(1), a parent may petition for a hearing to change, modify, or set aside any previously made order based on a change of circumstance or new evidence. A petitioner requesting modification under section 388 has the burden of proving by a preponderance of the evidence that the child’s welfare requires the change. (Cal. Rules of Court, rule 5.570(h)(1)(D) [“All other requests require a preponderance of the evidence to show that the child’s welfare requires such a modification.”]; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re J.T.* (2014) 228 Cal.App.4th 953, 965.) “[T]he petitioner must show *changed*, not *changing*, circumstances.” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; accord, *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) In addition, new evidence or a change in circumstance must be of such a significant nature that it requires modification of the challenged order. (*In re A.A.* (2012) 203 Cal.App.4th 597, 612; *In re Mickel O.*, at p. 615.)

A moving party is only entitled to an evidentiary hearing on a section 388 petition if he or she makes a prima facie showing of both a change in circumstance or new evidence and that the proposed change is in the child’s best interests. (Cal. Rules of Court, rule 5.570(d)(1) [§ 388, subd. (a) petition may be denied without a hearing if it “fails to state a change of circumstance or

new evidence . . . or fails to show that the requested modification would promote the best interest of the child”]; *In re Alayah J.* (2017) 9 Cal.App.5th 469, 478 [“To obtain an evidentiary hearing on a section 388 petition, a parent must make a prima facie showing that circumstances have changed since the prior court order, and that the proposed change will be in the best interests of the child.”].) “A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause.” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) We review an order denying a section 388 petition for an abuse of discretion. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318 [“the trial court’s ruling [on a section 388 petition] should not be disturbed on appeal unless an abuse of discretion is clearly established”]; *In re G.B.*, at p. 1158 [denial of § 388 petition without hearing reviewed for abuse of discretion].)

In her section 388 petition, Mother sought return of the children to her custody, reinstatement of her reunification services, and unmonitored visits. Mother contends she was deprived of due process because the juvenile court denied her section 388 petition without a hearing. But Mother’s due process rights are triggered only if the trial court finds she has made a prima facie showing and is entitled to an evidentiary hearing. (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1339-1340; *In re Lesly G.* (2008) 162 Cal.App.4th 904, 913-915.) Here, the juvenile court did not find Mother made a prima facie showing that her request stated changed circumstances and promoted the children’s best interests. As the court’s order denying the petition stated, “The request is denied because . . . the request does not state new evidence or a change of circumstances.” At the July 26, 2018 hearing, the court specified the petition was denied “based on the

Department's last report" and Mother's failure to complete her case plan.

The record supports the juvenile court's finding Mother did not complete her case plan. The court ordered Mother to participate in a full drug program with aftercare, random or on-demand drug testing, a 12-step program, a support group for domestic violence victims, parenting classes, and individual counseling to address case issues. While it is true Mother completed a substance abuse program provided by Inland Behavioral in April 2018 after attending 39 group sessions (out of 44) and having eight negative random drug tests,² Mother did not submit evidence of her participation in a 12-step program or substance abuse aftercare following completion of the rehabilitation program on April 6, 2018. Nor did she submit to additional random drug testing during the period from her completion date of April 6, 2018 through the July 26, 2018 hearing. Although Mother agreed to submit to on-demand drug testing on June 5, 2018, social worker Olmedo was unable to reach Mother to arrange for testing. Similarly, although Mother completed parenting classes on April 6, 2018, she did not provide evidence she participated in individual counseling or a domestic violence support group. In light of Mother's failure to complete her case plan, the juvenile court's denial of her section 388 petition without an evidentiary hearing for a lack of changed circumstances was not an abuse of discretion. (*In re G.B.*, *supra*, 227 Cal.App.4th at pp. 1159-1160.)

² Mother also submitted various documents from Alcance Victoria, but that rehabilitation program was not accredited or approved by the court or the Department.

Even if Mother had shown changed circumstances, the juvenile court did not abuse its discretion in making an implied finding that granting the section 388 petition was not in the best interests of the children. Mother was afforded 19 months of family reunification services before the juvenile court terminated the services on November 15, 2017. Mother did not complete her case plan after termination of her reunifications services. In addition, Mother did not provide evidence she could care for her children and meet their needs. Mother rented a room in Bakersfield and left every weekend to work as a security guard in the San Fernando Valley from Friday to Sunday. There is no evidence she had appropriate housing or childcare for the children if they were returned to her care.

Moreover, Joseph, Marlene, and Jacelyn had been out of Mother's custody for over two years. Angel was only four months old when he was detained from Mother. In November 2017 Marlene, Jacelyn, and Angel were placed together with their paternal cousin Crystal and her husband Carlos, who wanted to adopt the children. They enjoyed living with Crystal and Carlos and were happy in the home. After the girls were placed with Crystal, Joseph remained with Maria until March 3, 2018, when he was placed with his father, J.C. Joseph stated living with his father was "good." Mother only had six visits with Marlene, Jacelyn, and Angel from Christmas 2017 to July 12, 2018. Mother only visited Joseph twice a month while he was at Maria's home. Although J.C. did not impose any restrictions on Mother's visitation, she did not visit Joseph in J.C.'s home.

Mother failed to show how the children's best interests would be promoted by their return to her care, additional reunification services, or unmonitored visits. Therefore, the

juvenile court did not abuse its discretion in denying Mother's section 388 petition without an evidentiary hearing.

C. *Mother Received Notice of the Section 366.26 Hearing*

Mother contends her right to due process was violated because she was not given proper notice of the July 26, 2018 section 366.26 hearing. Section 294, subdivision (d), provides in relevant part, "[O]nce the court has made the initial finding that notice has properly been given to the parent, . . . subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, by electronic service pursuant to Section 212.5, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. . . ."

Mother concedes she was personally served with notice of the initial section 366.26 hearing set for March 14, 2018. When the hearing was continued to May 16, 2018, social worker Olmedo mailed notice to Mother indicating the recommendation was continued adoptive planning. At the May 16, 2018 hearing, the juvenile court ordered the parties back for the July 26 hearing. The juvenile court found, "The permanent plan of adoption is appropriate and is ordered to continue as the permanent plan."³

At the July 26, 2018 hearing, the juvenile court found notice was proper. Mother was not present at the hearing, but she was represented by counsel, who did not object to the notice.

³ On June 5, 2018 social worker Church also personally served notice on Mother, advising her of the July 26, 2018 hearing. However, this notice did not reference the permanent plan of adoption.

By failing to object to notice below, Mother forfeited her contention that notice was defective. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [“a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court,” although forfeiture is not “automatic”]; *In re Z.S.* (2015) 235 Cal.App.4th 754, 771 [father forfeited argument that notice of § 366.26 hearing was defective]; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1207-1209 [although father was not given notice of the jurisdiction and disposition hearings and due diligence declaration was inadequate, father forfeited challenge to notice by failing to object in the juvenile court].)

Even had Mother not forfeited her challenge to notice, we conclude she received adequate notice of the July 26, 2018 hearing. When a section 366.36 hearing is properly noticed, oral notice of a continued hearing date on the record in court is sufficient to satisfy due process. (*In re J.I.* (2003) 108 Cal.App.4th 903, 910 [a parent receives adequate notice “if he or she received proper notice of the [section 366.26] hearing in the first instance and the hearing was continued to another date when the parent was present in court”]; *In re Phillip F.* (2000) 78 Cal.App.4th 250, 259 [“actual notice of the continued hearing date . . . may be given . . . by first-class mail to the parent . . . , by written notice from the parent’s attorney, or by oral notice of the new date on the record in court”].) Mother was present at the May 16, 2018 hearing when the juvenile court ordered the parties back for the July 28 hearing. The juvenile court informed the parties at the May 16 hearing that adoption continued to be the permanent plan for Marlene, Jacelyn, and Angel. Mother therefore received adequate notice of the continued section 366.26 hearing at the May 16, 2018 hearing.

D. *The Juvenile Court Properly Terminated Mother's Parental Rights*

“At the section 366.26 hearing, the focus shifts away from family reunification and towards the selection and implementation of a permanent plan for the child.” (*In re S.B.* (2009) 46 Cal.4th 529, 532; accord, *In re Celine R.* (2003) 31 Cal.4th 45, 52-53.) “In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption . . . ; (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care.” (*Celine R.*, at p. 53.) “When the court finds by clear and convincing evidence that the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the six enumerated exceptions applies.” (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 780-781; accord, *Celine R.*, at p. 53 [“court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child”].)

“When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law.” (*In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 782 [evidence did not compel a finding sibling relationship exception applied]; accord, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 647 [record did not compel a finding beneficial parental relationship

exception applied].) But whether termination of the sibling or parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for an abuse of discretion. (*Elizabeth M.*, at p. 782; *Breanna S.*, at p. 647.)

1. *The Beneficial Parental Relationship Exception*

Mother concedes she did not assert the parental relationship exception in the juvenile court. A parent forfeits any exception to adoption not raised at the section 366.26 hearing. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 292 [mother forfeited sibling relationship exception by failing to raise it in juvenile court]; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403 [father forfeited sibling relationship exception by not raising it at the § 366.26 hearing].) As the court explained in *Erik P.*, “The application of any of the exceptions enumerated in section 366.26, subdivision (c)(1) depends entirely on a detailed analysis of the relevant facts by the juvenile court. [Citations.] If a parent fails to raise one of the exceptions at the hearing, not only does this deprive the juvenile court of the ability to evaluate the critical facts and make the necessary findings, but it also deprives this court of a sufficient factual record from which to conclude whether the trial court’s determination is supported by substantial evidence.” (*Erik P.*, at pp. 402-403.)⁴

⁴ Even had Mother not forfeited this issue, she would not have been able to meet her burden to prove the beneficial parental relationship exception applied. The juvenile court “shall” terminate parental rights unless it finds a compelling reason for determining termination would be detrimental to the child where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) Here,

2. *The Sibling Relationship Exception*

Mother also contends the sibling relationship exception applies. Under section 366.26, subdivision (c)(1)(B)(v), the juvenile court “shall” terminate parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child because it substantially interferes with a child’s sibling relationship, “taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” As we explained in *Elizabeth M.*, “‘To show a substantial interference with a sibling relationship the parent . . . must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.’” (*In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 781.) “[T]he concern is the best interests of the child being

Mother did not maintain regular visitation and contact with the children. She did not visit Angel from June until November 2017, and after Marlene and Jacelyn were also placed with Crystal in November 2017, she visited the three children only once a month. Further, Mother only spoke with the children by phone once a week, for about 20 minutes each call.

considered for adoption, not the interests of that child's siblings.”
(*Ibid.*)

The record does not compel a finding as a matter of law that termination of Mother's parental rights would substantially interfere with the relationship Marlene, Jacelyn, and Angel had with their half-brother Joseph. On July 26, 2018 the juvenile court gave J.C. full legal and physical custody of Joseph, with Mother having monitored visits, and terminated jurisdiction. Because Joseph did not live with Mother, termination of Mother's parental rights over Marlene, Jacelyn, and Angel would not interfere with their sibling relationship with Joseph. (See *In re J.T.* (2011) 195 Cal.App.4th 707, 719 [because sister was an adult sibling, “[s]he was fully capable of having a relationship with her brother regardless of whether mother's parental rights remained intact”]; *In re Erik P.*, *supra*, 104 Cal.App.4th at p. 403 [“Where the [parent's] continuing relationship with the dependent child, or absence thereof, can in no way affect the nature of the sibling relationship because the parent no longer has a relationship with the sibling, the exception does not apply.”].)

Moreover, there was evidence Marlene, Jacelyn, and Angel would continue to have a sibling relationship with Joseph after their adoption. At the section 366.26 hearing, minors' counsel stated the children were visiting each other and J.C. was “willing to continue to allow Joseph to maintain his sibling relationship with the minors.” Therefore, the juvenile court did not err in concluding Mother did not meet her burden of proving the sibling relationship exception applied.

DISPOSITION

The orders denying Mother's section 388 petition and terminating her parental rights are affirmed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.